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Department of Revenue

OFFICE Board of Revenue

STATION Madras

Ille No. 1273

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A 003/31

Dated 21/4/31

Date Initials

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To be destroyed on

MP - (Tamil Nadu) Mangalore

Dr Munsif's Os no 185/30

Attavar Vc Ry-land - Court of

Rathnam — Defence - Amendt

RP175 A 1003

Ref.No. 1443-31-A.3. South Kanara Collector's Office,
Mangalore, dated 26th March 1931.

From

G. W. Wells Esquire, M.A., I.C.S.,
Collector of South Kanara.

To

The Secretary to the Board,
Land Revenue & Settlement, Madras.

Sir,

Suits - Mangalore District Munsif's Court - O. S. No. 185/30 - Mrs. J. F. Coelho versus South Indian Railway Company and Government - Defence - Sanction requested.

I enclose a copy of the plaint in the above suit, which is for a permanent injunction restraining the defendants, their officers and servants from obstructing the plaintiff's use of the pathway and the flight of steps leading to her property S.Nos. 211/A and 212/A of Attavar village and also a -- mandatory injunction directing the Railway Company (1st defendant) to remove the obstruction put up by them across the flight of steps marked X in the plan, if they fail to do so, to permit the plaintiff to remove the obstruction at the defendant's expense.

' Mark "K" now found in the plan is a mistake for mark "X".

2. The suit was first filed against the Railway Company alone, but the Company having pleaded that the property through which the path was claimed is vested in Government and that therefore the Government was a necessary party to the suit, the plaintiff sent a suit notice to me. On a reference to the previous records, I found that there existed a mamool pathway through Railway land at least since 1908 and I consulted the -- Agent, South Indian Railway, Trichinopoly as to why the right of path should not be allowed to continue. The Agent, however, declined to allow the path but on the other hand, wanted that

Government should support the Company in its defence. 29-5-1 B)
therefore, consulted the Government Pleader, Mangalore, who
having opined that the plaintiff had no cause of action -- 135 (S)
against Government, I recorded the suit notice. The plain- 137 (S)
tiff has now impleaded Government as supplemental defendant. M 5-1 cl

3. The main point for consideration is whether the --
plaintiff is entitled to a mamool pathway. In this connec-
tion, I invite Board's attention to the Mangalore Tahsildar's
N.Dis. 6185-29 dated 3-10-1929 and the Mangalore Revenue ---
Divisional Officer's L.Dis. 4564-29-B dated 19-10-1929 in my
file L.Dis. 8819-29 enclosed. The fact that the Railway -
Company have left openings or gate-ways in the railway fence
and also constructed stone steps coupled with the fact that
the plaintiff has no access to the road, which fact was ad-
mitted by the Agent, South Indian Railway, Trichinapoly, in
his No.W.C.186/2/16 dated 20-9-1929, proved beyond doubt that
the plaintiff is entitled to the path. The Company's conten-
tion that the land in question was acquired for railway pur-
poses free from all encumbrances, including easements of neces
sity, such as the one claimed by the plaintiff, would have -
stood, if the mamool right of pathway existed only before the
land was acquired and not thereafter Whether the pathway
existed prior to the date of acquisition in 1905 or not, the
Agent admits that the Railway administration allowed such a -
right of way in the case of the owner of S.No. 210/A. Though
the Agent says that there is no record to show that similar
sanction was given to the plaintiff, the plaintiff's conten-
tion is that a similar communication was received by her and
that it was destroyed by fire. The plaintiff's land and house
lie between S.No. 210/A referred to above on the south and the
road from which the footpath runs, on the north. When a path
is allowed in the case of the owner of S.No. 210/A, it is but
natural that a similar right must have been allowed in the
case of the plaintiff as well. The Government is not, how-
ever, concerned much about the result of the suit, as the rail-

way land, through which a path is claimed was acquired for railway purposes and now forms the sole property of the Company. I think that a non-committal statement should be filed on behalf of Government and the case watched. I enclose a copy of the Mangalore Government Pleader's letter Ref. No. 51/30 dated 12-3-1931 containing a draft of the written statement to be filed and request that it may be approved and the defence of the suit sanctioned.

4. The original plaint is dated 9-6-1930. It was revised on 31-1-1931 by impleading Government as supplemental defendant and a copy of the revised plaint was received by me with the notice of posting on 4-2-1931. The suit, which originally stood posted to 3-6-1931, has now been reposted to 15-6-1931. I enclose the records noted in the margin for Board's reference and return.

s file D.Dis. 9532-30
,, L.Dis. 8818-29
,, L.Dis.11069-29
,, L.Dis. 1160-30
,, L.Dis. 2616-30

Your obedient servant,

For Collector.

27.3.31

In the Court of the District Munsif of Mangalore.

O. S. No. 185/1930.

Between

Mrs. J. F. Coelho Plaintiff.

and

1. The South Indian Railway Co.,Ltd., Defendants.

2. The Secretary of State for India (Supplemental defendant) in Council

Plaint under Section 26, Order VII C.P.C.

The Plaintiff above-named states as follows:-

1. The Plaintiff is the widow of Ambrose Mascarenhas and is a land-holder, residing in Attavar Village, Mangalore Town, which is her address for service of all notices and process.

2. The 1st defendant is the South Indian Railway Co.,Ltd., and is represented by the General Agent at Trichinapoly. The 2nd defendant is the Secretary of State for India in Council and is represented by the Collector of South Kanara.

(1) The Plaintiff is the owner of Survey Field No.211/A and 212/A of Attavar village, Mangalore Taluq, South Kanara District, while Survey Field No. 211/B and Survey Field No. 212/B of the said village are held by the Defendant Company, the same having been acquired for the Railway about 25 years ago from the plaintiff who was the owner of the entire Survey Field Nos. 211 and 212.

(2) That prior to the acquisition aforesaid, the said Survey Field Nos. 211 and 212 were accessible to the public road which ran on the west and to a public lane situated on the north thereof marked as 218/B in the plan filed herewith by pathways over the intervening land. After the acquisition, both the public road on the west and the public lane on the north ceased to exist, and a new road was opened marked as B1, C, B. B. B. in the plan filed herewith. To give access to the Plaintiff's Survey Field Nos. 212/A and 211/A, the Defendant Company constructed a flight of stone steps at the place marked X in the plan filed herewith which was connected with a new pathway opened by the Defendant Company in Survey Field Nos. 212/B and 213/B marked as Y in the accompanying plan, which in its turn

as connected with the aforesaid new road by another flight of stone steps also constructed by the defendant at the northern end of the pathway Y, marked as Z in the plan. Similarly another flight of steps was opened by the Defendant at the site marked Q in the plan so give access to the Survey Field No. 210/A belonging to one P. D. Saldanha. The said flight of steps and pathway are still existant. While closing the Survey Field Nos. 213B/, 212/B, 211/B and 210/B on the east by means of a wire fencing, the Defendant Company also left gaps in the fencing of about 6 feet in width at the flight of steps marked X and Q.

(3) Ever since the acquisition of the 211/B and 212/B by the Defendant Company, the Plaintiff has been using the said flight of steps, at X, the pathway Y and the flight of steps at Z to go and from her property Survey Field Nos. 211/A and 212/A and the buildings therein from and to the new public road aforesaid as of right openly peacably without interruption and obstruction from any one until May 1928 when the defendant Company obstructed the pathway at the flight of steps at X, by putting up a wire fencing.

(4) The Plaintiff is entitled to the passage and pathway in question as an easement of necessity there being no other passage for her and for her tenants to go to the public road from her said Survey Field Nos. 211/A and 212/A, except through the pathway in question. The plaintiff is also entitled to the said pathway as a quasi easement by reason of the severance of the holdings Survey Field Nos.211 and 212 into Survey Field Nos.211/A and B and 212/A and B at the time of the acquisition. The plaintiff is also entitled to the pathway as an easement by prescription by uses thereof for over the statutory period as aforesaid.

(5) The Defendants'obstruction caused in May 1928, is wrongful and tortious. The Defendant Company has failed to remove the obstruction inspite of Plaintiff's repeated demands and registered notices dated 9-8-1928 and 31-3-1930. The obstruction causes much hardship and inconvenience to the plaintiff and her tenants in occupation of Survey Field Nos.211/A and 212/A. The Defendant Company has however removed the obstruction placed at Q on the representation made by the owner of

Survey Field No.210/A. But Plaintiff's remonstrances have been in vain. Hence this suit, the cause of action for which arose in Attavar village, within the jurisdiction of this Court since May 1928 when the obstruction was first put up by the Defendant Company. The suit is not barred by reason of the Court recess.

(6) The Defendant contends that the Secretary of State for India in Council is a necessary party to the suit, as the property over which the pathway is claimed is vested in the said Secretary of State for India in Council and he is therefore added as supplemental 2nd Defendant. The necessary notice was given on 13-9-1930 and the same was acknowledged by the Collector on 17-11-1930.

4. The Plaintiff values the relief sought for at Rs.60/- for purposes of jurisdiction and Court fees.

5. The Plaintiff prays for a decree against Defendants for the following reliefs:-

(1) A permanent injunction restraining the Defendants their Officers and servants from obstructing the plaintiff and her tenants while they are using the pathway marked Y and the flight of steps marked X and Z for ingress to and egress from her property Survey Field Nos.211/A and 212/A. This relief is valued at Rs.50- 0- 0

(2) A mandatory injunction directing the Defendants Company to remove the obstruction put up by them across the flight of steps marked X in the plan and on their failure to do so, permitting the plaintiff to remove the said obstruction through process of Court at Defendants' expense. This relief is valued at Rs. 5- 0- 0

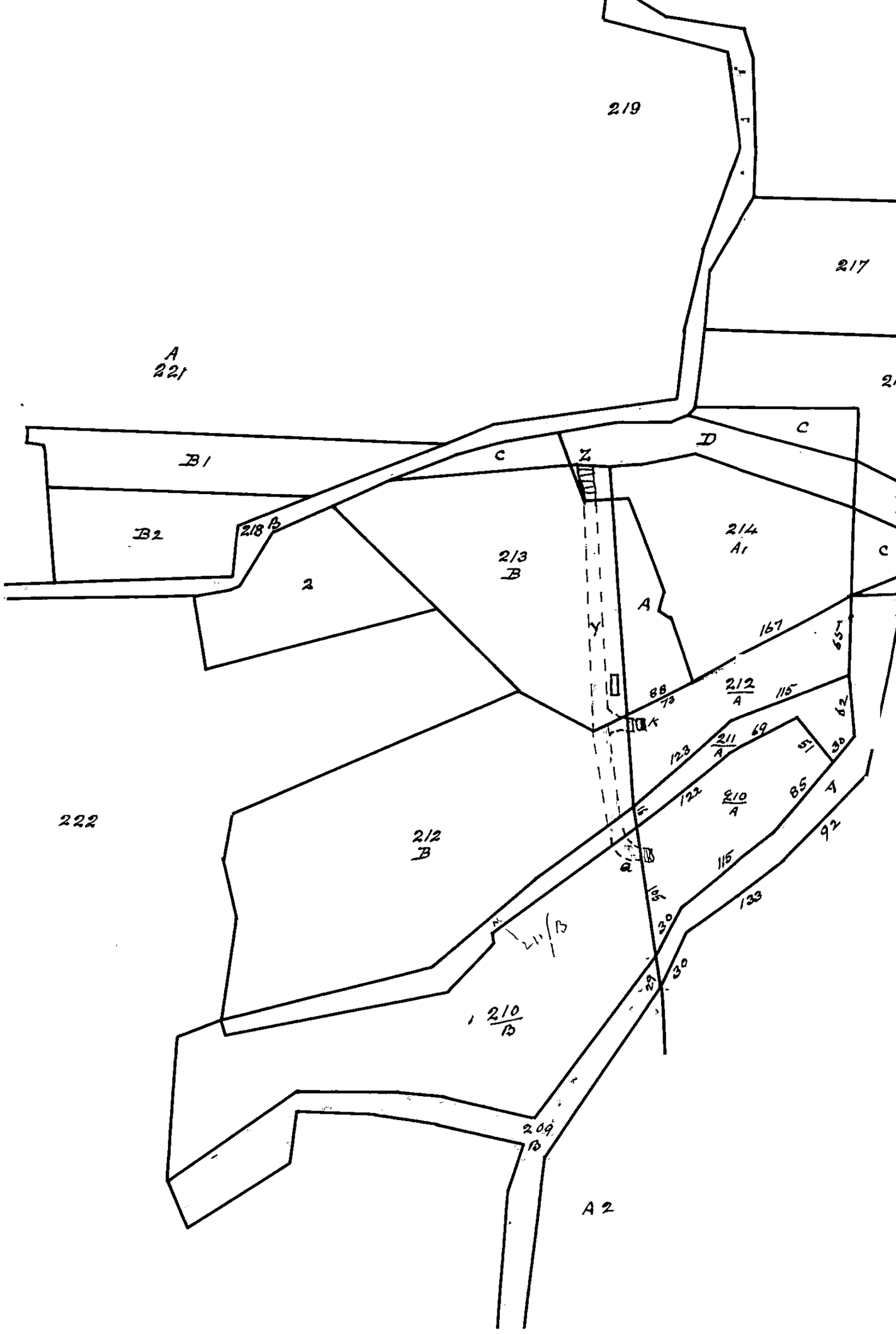
(3) Directing the Defendants to pay cost of registered notices Rs. 5- 0- 0

Rs.60- 0- 0

(4) Directing the Defendants to pay costs of suit with interest thereon at 6% from date of decree till payment, and for such

other and further relief as to this Court may seem fit under the circumstances of the case.

For Collector.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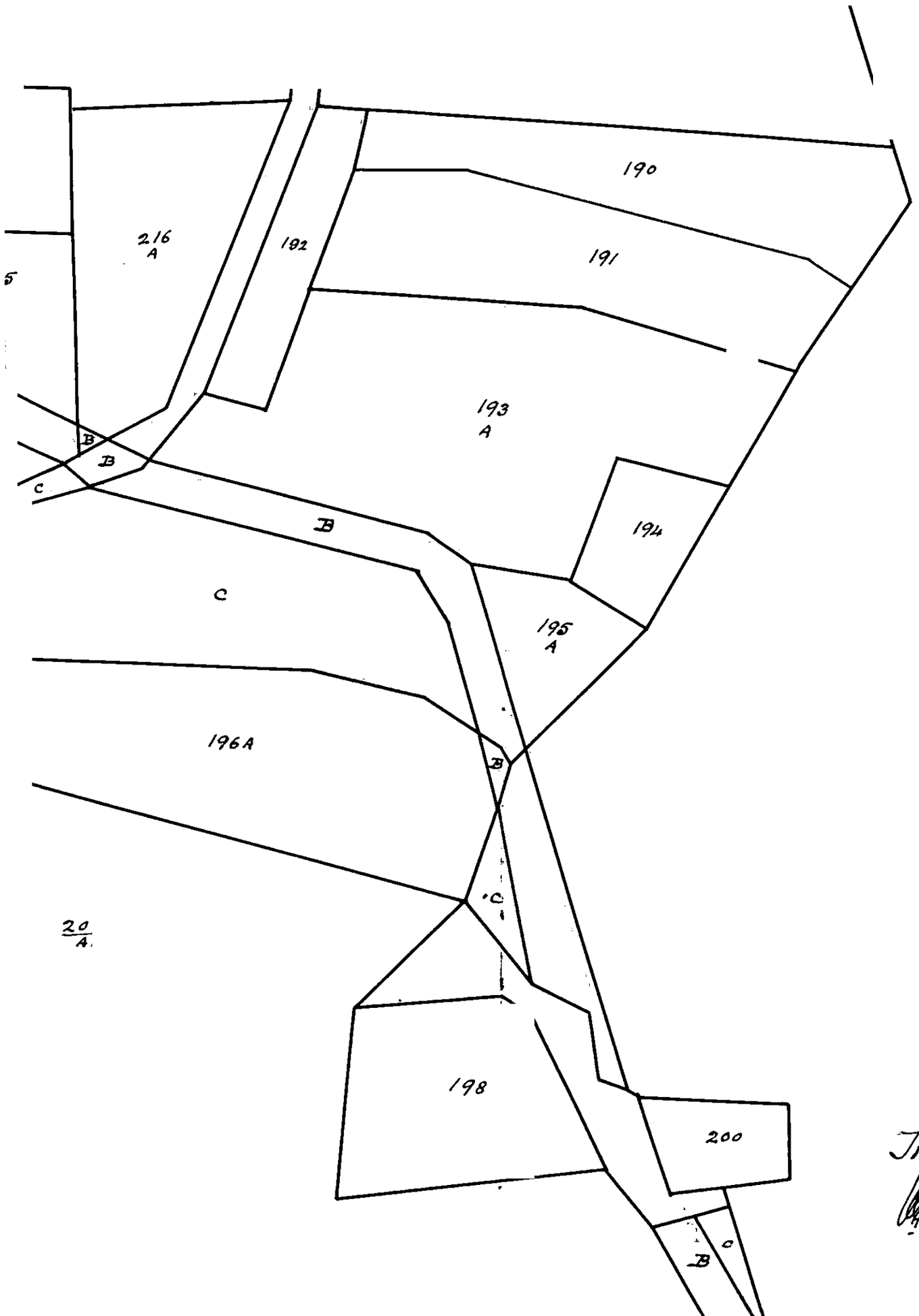

True tracing

Kragaff

24/2/31

Draftsman

Letter-from M.R.Ry. Diwan Bahadur B. Mahabala Hegde, Avl
B.A., B.L., Advocate, Government Pleader and
Public Prosecutor, Mangalore.
To-the Collector of South Kanara.
Dated-12th March 1931.
No.-Ref.No.51/30.

******

Reference:- Suits - Mangalore - District Munsif's Court - O.S.185/30 - Mrs. J.F.Coelho versus South Indian Railway Company and Government.

Your Ref.A3-No.1443-31, dated 11th February 1931.

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Written statement of supplemental second defendant, Secretary of State for India in Council.

1. That no cause of action lies against this supplemental second Defendant.

2. It is for the first Defendant to traverse plaint allegations.

3. Government ~~is an unnecessary party.~~ has unnecessarily been impleaded as a party.

Prays therefore that the suit as against this Defendant may be dismissed with costs.

Connected records are herewith returned.

******

M.D'S.27/3.

27.3.31

Suit posted to 15-6-31

Subject.

R. F. XXII-A-19—39,500 22-4-30

FOR MEMBER

M1 / S / AS (LR)

Suits - (South Kanara Mangalore St Munsiff — OS no 185/30 — Attavar Vgl Dyland — Right of pathway — defer Sanctioned.

READ AGAIN B. P. No. _____, dated _____ 193

193

READ ALSO :— A. 1003/31

Register No. _____, from the _____, No. _____, dated _____ 193

" " _____, " " _____, " " _____, " _____ 193

" " _____, " " _____, " " _____, " _____ 193

RESOLUTION. Mis No. 1273, dated 21-4- 1931

(I have altered (3) in the 15-5. As it stands it is neither English nor sense. 15-5-31)

The Board sanctions the defence of the suit and approves the draft written statement with the alteration made in ground (3). ~~subject to the following modification~~ -

(1) Add to the following as para 4 " The suit ~~is barred by limitation~~

W. dy 15/5/31
13/5/31

The Collector of South Kanara with records as at 3 c/l hill (of a officer) as proposed